

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MONTGOMERY CARL AKERS,

Plaintiff,

vs.

JAMES KESZEI, *et al.*,

Defendants.

Case No. 2:07-cv-00572-JCM-GWF

ORDER

Presently before the court are the report and recommendation of United States Magistrate Judge George Foley (Doc. #154), which was filed on April 24, 2009. Judge Foley recommended dismissing defendant James Keszei from this matter without prejudice. Plaintiff timely filed objections to this recommendation. (Doc. # 159.)

Now, in keeping with 28 U.S.C. § 636(b)(1)(C) and LR IB 3-2(b), this court must conduct a *de novo* review of those portions of the report and recommendation to which plaintiff has objected. Here, plaintiff objects to Judge Foley's finding that plaintiff failed to properly serve defendant James Keszei within 120 days of the filing of the complaint as required by Fed. R. Civ. P. 4(m).

The complaint in this case was filed on June 22, 2007, but plaintiff was not granted leave to proceed in forma pauperis until May 21, 2008. At that time, Judge Foley ordered the clerk to issues summonses for all defendants. The order instructed plaintiff to provide Forms USM-285 to the United States Marshal so that service could be effected on each defendant. The Form USM-285 provided detailed instructions on how to serve the United States and its representative with a lawsuit. Specifically, the form states:

...

...

1 In cases where the court has directed the USMS to effect service of a summons and
2 complaint upon an officer or agent of the United States Government, submit a copy of the
3 summons and complaint and Form USM-285 for each officer or agent upon whom service
4 is desired. Submit two (2) additional copies of the summons and complaint for service upon
the Government of the United States. The U.S. Marshal or designee will serve one copy
upon the U.S. Attorney and will forward the other copy to the Attorney General of the
United States.

5 Plaintiff did not follow these instructions. As a result, defendant Keszei was served on December 31, 2008,
6 but the United States Attorney and the Attorney General of the United States were never served as required
7 by Fed. R. Civ. P. 4(i).

8 Now, more than one year after he was ordered to serve the defendants, plaintiff is seeking an order
9 allowing him to attempt proper service once again. Rather than explain his failure to follow the directions
10 for proper service, plaintiff repeats his previous allegations that Judge Foley is biased and is abusing the
11 judicial process in this case.

12 Finding that plaintiff has presented no valid explanation for his failure to effect proper service,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Magistrate Judge Foley's report
14 and recommendation (Doc. #154) are **AFFIRMED** in their entirety.

15 IT IS FURTHER that plaintiff's motion for an extension of time (doc. #157) is **DENIED as moot**.
16 Plaintiff's objections to the report and recommendation (doc. #159) and plaintiff's response to Magistrate
17 Judge Foley's order (#158) were both timely filed; thus, no extension was necessary.

18 DATED this 1st day of June, 2009.

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22 UNITED STATES DISTRICT JUDGE
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